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Attorneys for Defendants  
Woodbine Alaska Fish Company,  
and Guy Ferrari Inc.

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF ALASKA**

CITICAPITAL COMMERCIAL CORP, )  
Plaintiff, )

v. )

EGEGIK SPIRIT, official number 2999957, )  
her equipment, gear, furniture, apparel, )  
fixtures, tackle, boats, machinery, anchors )  
and all appurtenances, in rem; )

NAKNEK SPIRIT, official number 585824, )  
her equipment, gear, furniture, apparel, )  
fixtures, tackle, boats, machinery, anchors )  
and all appurtenances, in rem; )

WOODBINE ALASKA FISH CO., )  
in personam; and GUY FERRARI, INC, )  
in personam. )

Defendants, )

**Case No. A-04-0147 CI**  
**IN ADMIRALTY**

**DEFENDANTS' REQUEST FOR**  
**JUDICIAL NOTICE IN**  
**SUPPORT OF OPPOSITION TO**  
**SUMMARY JUDGMENT**

**[FRE 201]**

**Date: 1/31/06**  
**Time: 10:00 a.m.**

**Honorable Magistrate John D.**  
**Roberts**

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Now come Woodbine Alaska Fish Company for itself, and on behalf of its vessel, the *Egegik Spirit*, and Guy Ferrari, Inc., for itself and on behalf of its vessel the *Naknek Spirit*, and hereby request the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the following facts: that Defendants pled, *inter alia*, the following affirmative defenses in their Answer:

EIGHTH AFFIRMATIVE DEFENSE  
(Failure to Fully Set Out Claims)

Defendants allege that Plaintiff has failed to set out its claims with sufficient particularity to enable Defendants to raise all appropriate defenses and, thus, Defendants reserves their right to add additional defenses as the factual basis for these claims becomes known.

NINTH AFFIRMATIVE DEFENSE  
(Unclean Hands, Inequitable Conduct)

Plaintiff's conduct is barred, in whole or in part, by its own unclean hands and inequitable conduct.

FOURTEENTH AFFIRMATIVE DEFENSE  
(Equitable Estoppel)

These answering Defendants allege that Plaintiff herein, and each and every Cause of Action contained in the complaint, are barred by reason of acts, omissions, representations and courses of conduct by Plaintiff by which Defendants were led to rely to their detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by the Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE  
(In the Alternative)

In the alternative, should the Court determine that, at the time of contracting, Plaintiff and Defendants did not share a common intent with respect to the effect of

1 Plaintiff's exercise of the Promissory Note and the two Preferred Ship Mortgages against  
2 the aforementioned vessels and Security Agreements alleged therein, then there was no  
3 mutual assent ("meeting of the minds") on the issue, and Defendants have no obligation to  
4 Plaintiff.

5  
6 Dated: 9 January 2006

BIRNBERG & ASSOCIATES

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8 By: /s/ Cory A. Birnberg  
9 Cory A. Birnberg  
10 Attorneys for Defendants  
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